

exempt, conditionally or unconditionally, an NASD member who is prohibited from engaging in municipal securities business with an issuer pursuant to subsection (b) of MSRB Rule G-37 from that prohibition. MSRB Rule G-37(i)(i) provides that the NASD shall consider among other factors, whether such exemption is consistent with the public interest, the protection of investors and the purposes of this rule. MSRB Rule G-37(i)(ii) sets forth further criteria for the granting of the exemption by requiring that the MSRB member have in place procedures designed to ensure compliance with the rule,⁸ had no actual knowledge of the contributions, has taken appropriate steps to obtain return of the contribution(s), and has taken other remedial measures as may be appropriate.

Release 34-34160 states that the MSRB believes that exemptions from MSRB Rule G-37 should be granted only if a disgruntled employee contributes to an issuer official for the purpose of injuring the member or if an employee makes a number of small contributions during an election cycle (e.g., four years) which, when consolidated, amount to slightly over the \$250 *de minimus* exemption (such as contributions totalling \$255). It also states that the MSRB would expect that the exemption not be routinely requested by dealers and that exemptions would be granted by the NASD only in limited circumstances.⁹

In order to implement a procedure for reviewing requests for NASD member exemptions anticipated under MSRB Rule G-37, the rule change adopts a statement of policy that establishes an NASD internal procedure to grant

exemptions from MSRB Rule G-37. As noted above, the statement of policy is an internal procedure and does not amend existing rules contained in the NASD Code of Procedure or other existing NASD rules.

The statement of policy provides that the staff of the Regulation Business Line, as assigned by the Executive Vice President of Regulation initially will issue a written decision concerning whether to grant a member's request for exemption from MSRB Rule G-37. If the staff determines to deny the member's request for exemption, the written decision must include a statement advising the member that it has 15 days in which to appeal the initial staff determination to the Fixed Income Committee of the NASD.

The statement of policy provides that the Board will delegate authority to the Fixed Income Committee, or a subcommittee thereof, to review the appeal of a member regarding an NASD staff denial of an exemption from MSRB Rule G-37.

The Board may review a decision of the Fixed Income Committee, or a subcommittee thereof, solely upon the request of one or more Governors. Such a review would be undertaken solely at the discretion of the Board and will be in accordance with resolutions of the Board. In reviewing any decision of the Fixed Income Committee, the Board may affirm, modify or reverse a decision of the Fixed Income Committee, or the relevant subcommittee, or remand the matter to the Fixed Income Committee with appropriate instructions.

The statement of policy reflects the NASD's belief that the Fixed Income Committee is the appropriate reviewing body because the members of the Fixed Income Committee should have the requisite knowledge regarding the municipal business necessary to weigh the member's argument that the requested exemption would comply with the provisions and intent of MSRB Rule G-37. In addition, the NASD stated that it believes that vesting authority with the Fixed Income Committee should ensure that uniform standards are applied throughout the country to requests for exemptions from Rule G-37, and that these standards should effectuate the intent of the MSRB that the NASD grant such exemptions under very limited circumstances, as noted above.

The Commission finds that the rule change is consistent with the provisions of Section 15A(b)(2) of the Act because it establishes a procedure to enforce compliance with MSRB Rule G-37 that is intended to effectuate the intent of the MSRB that the NASD grant exemptions

only under the limited circumstances contemplated by the MSRB. The Commission also finds that, for the reasons set forth above, the rule change is consistent with the provisions of Section 19(g)(1)(B) of the Act, which requires that the NASD, absent reasonable justification or excuse, enforce compliance with MSRB rules.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-95-15 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36392; File No. SR-NSCC-95-11]

**Self-Regulatory Organizations;
National Securities Clearing
Corporation; Order Granting
Temporary Approval of a Proposed
Rule Change Concerning Book-Entry
Money Settlements With Members**

October 18, 1995.

On August 8, 1995, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR-NSCC-95-11) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the Federal Register on August 24, 1995.² No comments were received by the Commission. This order approves the proposal on a temporary basis.

I. Description of the Proposal

On October 5, 1990, NSCC filed a proposed rule change with the Commission that was noticed in the Federal Register³ and was subsequently amended three times.⁴ On September 4, 1992, the proposal as amended was approved on a temporary basis through

⁸ The MSRB clarifies its view regarding effective compliance procedures for Rule G-37 in a letter dated March 14, 1995 from Christopher A. Taylor, Executive Director, MSRB, to John E. Pinto Jr., Executive Vice President—Regulation, NASD. That letter states that the MSRB believes that Rule G-37 requires a dealer to have information regarding each contribution made by the dealer, dealer-controlled political action committees and municipal finance professionals so that it can determine where and with whom it may or may not engage in municipal securities business. In addition, the dealer must have information on executive officer contributions and political party payments and consultant hiring practices for disclosure purposes. Moreover, the dealer must ensure that those persons and entities subject to MSRB Rule G-37 are not causing the dealer to violate MSRB Rule G-37. Furthermore, the dealer must ensure that other people and entities hired to assist in municipal securities activities (e.g., consultants) are not being directed to make contributions, or otherwise being used as conduits, in violation of MSRB Rule G-37.

⁹ Release 34-34160 also states that the MSRB will seek information from the NASD regarding the granting of any exemptions in order to monitor the implementation of this provision, and to determine if any changes are necessary.

¹ 15 U.S.C. 78s(b)(1) (1988).

² Securities Exchange Act Release No. 36112 (August 17, 1995), 60 FR 44093.

³ Securities Exchange Act Release No. 28715 (December 12, 1990), 55 FR 715 [File No. SR-NSCC-90-21].

⁴ Letters from: (1) Jeffrey F. Ingber, Associate General Counsel, NSCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation ("Division"), Commission (August 14, 1991); (2) Peter J. Axilrod, Associate General Counsel, NSCC, to Jerry Carpenter, Branch Chief, Division, Commission (March 23, 1992); and (3) Peter J. Axilrod, Associate General Counsel, NSCC, to Thomas C. Etter, Jr., Attorney, Division, Commission (July 22, 1992).

August 31, 1993.⁵ The temporary approval subsequently was extended through August 31, 1995.⁶ The current filing requests an extension of the temporary approval order until such time as NSCC implements its same-day funds settlement system.⁷

As discussed in detail in the approval order of September 4, 1992, the rule change permits NSCC members to satisfy their settlement obligations to NSCC and permits NSCC to satisfy its settlement obligations to its members by means of electronic intrabank funds transfers between members' accounts and NSCC's accounts at various settlement banks. Under the proposal, two types of intrabank funds transfers are available: (1) Electronic transfers whereby on settlement day NSCC pays a member by check for next-day value and the member pays NSCC by NSCC directing the settlement bank to make an irrevocable transfer from the member's account to NSCC's account for next-day availability or whereby a member pays NSCC by check and NSCC effects payment by electronic transfer ("one-way electronic transfers") and (2) electronic transfers whereby on settlement day both NSCC and a member pay by NSCC directing the settlement banks to make irrevocable transfers for next-day value without any netting ("two-way electronic transfers").

As a prerequisite to either NSCC or any of its members making a settlement payment by an electronic funds transfer, the rule change imposes three requirements. First, any such payment must be effected on a next-day funds availability basis.⁸ Second, any such payment must be in conformity with an agreement, which must be executed by NSCC and any bank that acts as a payment intermediary, which stipulates that any such funds transfer must be effected on an irrevocable and final basis.⁹ Third, any bank that acts as an

intermediary for such funds transfers must meet NSCC's standards for letter of credit issuers.¹⁰

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with Section 17A of the Act.¹¹ Section 17A(a)(1) of the Act¹² encourages the use of efficient, effective, and safe procedures for securities clearance and settlement. Moreover, Section 17A(b)(3)(F) of the Act¹³ requires that the rules of clearing agencies be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds in the custody or control of clearing agencies or for which they are responsible. As set forth in its original approval order of September 4, 1992, the Commission agrees with NSCC that substantial marketplace efficiencies should be achieved by authorizing NSCC and its members to effect electronic intrabank funds transfers to satisfy their settlement obligations. The Commission recognizes that the exchange of checks is labor-intensive and that physical movement of checks can involve loss or delay. Intrabank funds transfers should, therefore, enhance the proficiency of the transferring and the safeguarding of funds. Moreover, earlier finality of settlement provides certainty to the marketplace and serves to increase investor confidence in the markets.

The Commission is temporarily approving this proposed rule change in order that NSCC may continue the program until such time as NSCC implements its same-day funds settlement system. Furthermore, the Commission notes that this order relates only to intrabank transfers of funds available on a next-day basis. If and when NSCC desires to implement an interbank funds transfer program whereby same-day funds are transferred, NSCC will be required to submit for

Commission approval a separate and comprehensive Rule 19b-4 filing.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act¹⁴ that the above-mentioned proposed rule change (File No. SR-NSCC-95-11) be, and hereby is, approved until such time as NSCC implements its same-day funds settlement system.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁵

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[Release No. 34-36399; File No. SR-NYSE-95-14]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Permanent Approval of Its Pilot Program for Stopping Stock under Amendments to Rule 116.30

October 20, 1995.

I. Introduction

On March 31, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to approve permanently amendments to Exchange Rule 116.30 that would permit specialists to stop stock in minimum variation markets.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35908 (June 28, 1995), 60 FR 34564 (July 3, 1995). The Commission received a total of three comment letters opposing the proposal, two of which were from the same commenter.³ The NYSE submitted one letter supporting its proposal and responding to the Peake March 1, 1995

⁵ Securities Exchange Act Release No. 31157 (September 4, 1992), 57 FR 42602 [File No. SR-NSCC-90-21].

⁶ Securities Exchange Act Release No. 32836 (September 2, 1993), 58 FR 47483 [File No. SR-NSCC-93-08]; Securities Exchange Act Release No. 34573 (August 22, 1994), 59 FR 44443 [File No. SR-NSCC-94-17].

⁷ It is anticipated that same-day funds settlement will be instituted in early 1996.

⁸ The term "next-day funds" refers to funds paid today that will be available tomorrow. By contrast, "same-day funds" refers to funds that are immediately available.

⁹ The September 4, 1992, order noted that on March 24, 1992, NSCC filed with the Commission a letter representing that NSCC: (1) Will submit for Division approval the current form of any agreement pursuant to which intrabank funds transfers are to be made and (2) will notify the Division of the identity of each bank that enters into any such contract. Letter from Peter J. Axilrod, Associate General Counsel, NSCC, to Jerry

Carpenter, Branch Chief, Division, Commission (March 23, 1992).

¹⁰ For a bank or trust company to be approved by NSCC to issue letters of credit on behalf of members for purposes of clearing fund requirements, the bank or trust company must meet specific standards in terms of: (1) Minimum levels of stockholders' equity and (2) certain credit ratings for its short term obligations as determined by Standard and Poor's Corporation or Moody's Investor Service, Inc. NSCC Rule 4, Section 1; Securities Exchange Act Release No. 29444 (July 16, 1991), 56 FR 34081 [File No. SR-NSCC-91-03] (order approving NSCC's revised standards for approved issuers of letters of credit for clearing fund purposes).

¹¹ 15 U.S.C. 78q-1 (1988).

¹² 15 U.S.C. 78q-1(a)(1) (1988).

¹³ 15 U.S.C. 78q-1(b)(3)(F) (1988).

¹⁴ 15 U.S.C. 78s(b)(2) (1988).

¹⁵ 17 CFR 200.30-3(a)(12) (1991).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Junius W. Peake, Monfort Professor of Finance, University of Northern Colorado, to Secretary, SEC, dated March 1, 1995 ("Peake March 1, 1995 Letter"); letter from Junius W. Peake, Monfort Professor of Finance, University of Northern Colorado, to Secretary, SEC, dated July 21, 1995 ("Peake July 21, 1995 Letter"); letter from Morris Mendelson, Professor Emeritus of Finance, The Wharton School of University of Pennsylvania, to Jonathan Katz, Secretary, SEC, dated August 2, 1995 ("Mendelson Letter"). Two of the letters were submitted by one commenter, with the later letter responding to NYSE's response to the commenter's first letter. See *infra* note 4. See also *infra* notes 13-15 and accompanying discussion.